

Thomas F. West and Diana M. West
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Las Vegas, Nevada 89130
Telephone (702) 656-3081
Plaintiffs in Proper Person

2010 DEC 20 A 10:43

UNITED STATES DISTRICT COURT
District of Nevada

THOMAS F. WEST and DIANA M. WEST

PLAINTIFFS

vs.

BANK OF AMERICA, N.A. and

BANK OF AMERICA HOME LOANS and

BAC HOME LOANS SERVICING LP and

MERS - Mortgage Electronic Registration

Services

DEFENDANTS

Case No.: 2:10-cv-01966-JCM-PAL

OPPOSITION TO MOTION TO DISMISS
AMENDED COMPLAINT
And REQUEST FOR DISMISSAL OF
MOTION

Thomas F. West and Diana M. West, Plaintiffs, in proper person, submit their Opposition to the Motion to Dismiss Amended Complaint filed by Defendants.

The Motion filed with the Court it is evident that the Defendants cannot show ownership of the alleged Mortgage Loan.

Defendants through their counsel respond to the Complaint filed using a cookie cutter excuse to ask for Dismissal by stating Plaintiffs defaulted on a Mortgage Loan. Plaintiffs were not in default on this loan as evidenced by Exhibit A until October, 2010 after determining that Defendants do not own the alleged mortgage and cannot prove their claim of ownership. It is obvious and apparent that Defendants are asking for a Dismissal with little or no knowledge of why this suit was filed. Plaintiffs are former bankers with over 20 years experience and have never defaulted on any loan. Defendants are now being sued by the States of Nevada, Arizona

1 and others for this and other frauds upon their customers. Defendants counsel keeps referring to
2 a frivolous lawsuit by Plaintiffs being in default. This is probably because counsel has not had a
3 proper conversation with Defendants as to the particulars of this case. It is holder in due course.
4 Defendants do not now own nor have ever owned this mortgage by failure to hold and possess
5 the original Deed of Trust Mortgage original note, and other pertinent documents. They persist
6 in bringing into the Court counterfeit copies of documents that anyone can take from the internet
7 which our contention would be fraud upon the Court. They have also shown as exhibits copies
8 of correspondence between Plaintiffs and Defendants that have been altered and are not
9 complete.

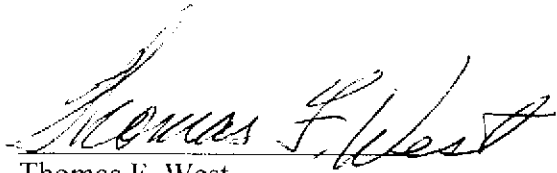
10 To show standing with the Court Defendants must have access to the original Deed of
11 Trust, the Mortgage Note and supporting original documents. In the case of Mortgage
12 Electronic Registration Systems, Inc. v. Chong, Case No. 2:09-CV-0661-KJD-LRL (2009), the
13 United States District Court, District of Nevada stated that "MERS did not establish it was a real
14 party in interest. MERS was unable to prove it had possession of the note or at least provide
15 evidence that it was a representative of the mortgage loan holder, which it failed to do."
16 Additionally, in a Landmark decision in the Kansas Supreme Court, National Bank v. Kesler,
17 289 Kan. 528, 216 P.3d 158 (2009). "Kan. Stat. Ann. § 60-260(b) allows relief from a judgment
18 based on mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence that
19 could not have been timely discovered with due diligence; fraud or misrepresentation; a void
20 judgment; a judgment that has been satisfied, released, discharged, or is no longer equitable; or
21 any other reason justifying relief from the operation of the judgment. The relationship that the
22 registry had to the bank was more akin to that of a straw man than to a party possessing all the
23 rights given a buyer." Also in September of 2008, a California Judge ruling against MERS
24 concluded, "There is no evidence before the court as to who is the present owner of the Note.
25 The holder of the Note must join in the motion." Wells Fargo v. Reyes, 867 N.Y.S.2d 21 (2008).
26 Case dismissed with prejudice, fraud on the Court and Sanctions because Wells Fargo never
27 owned the Mortgage.

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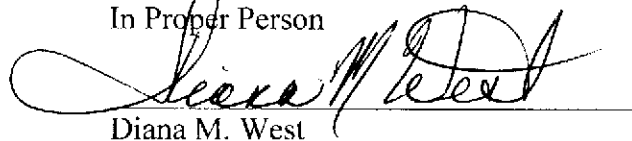
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1 Therefore, we move that the Court dismiss Defendants Motion to Dismiss for lack of
2 standing with the Court in this case and grant Plaintiffs request for Motion for Dismissal of the
3 same.

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5 Dated this 20 day of December, 2010.

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7 Thomas F. West
8 Plaintiff
9 In Proper Person

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11 Diana M. West
12 Plaintiff
13 In Proper Person
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EXHIBIT A



Conventional - 6067
5620 SCENIC POINTE AVENUE

Monthly Statement - August 31, 2010[Print this page](#)[Return to Account Details](#)

To view any activity since your last statement please select Transaction History

Next Payment Due

10/01/2010 \$732.92 [Payment Option Details](#)

Home Loan Summary**Home Loan Overview as of 08/31/2010****Amount Due on 10/01/2010 as of 08/31/2010**

Principal Balance:	\$110,045.83	*Home Loan Payment:	\$732.92
Escrow Balance:	\$0.00	After 10/16/2010 with Late	
Interest paid to date:	09/01/2010	Payment:	\$769.57
Late Charge if payment received			
after 10/16/2010:	\$36.65		

*Payments will be applied first to the interest accrued up to the date of payment and then to the principal balance.

Home Loan Details**Monthly Payment Breakdown as of 08/31/2010****Loan Type and Term**

Principal and Interest Payment:	\$732.92	Loan Type	30 Yr Conventional
Total Monthly Home Loan		Current Interest Rate	5.875%
Payment:	\$732.92	Contractual Remaining Term	22 Years, 8 Months

We may charge you a fee for any payment returned or rejected by your financial institution, subject to applicable law.

Escrow Account Expenses

Principal	Payee	Policy No./Tax ID	Frequency	Next Due Date	Amount Due
*Homeowners Insurance	ALLSTATE INSURANCE CO	916613067	Annual	12/24/2010	\$631.89

We are responsible for the payment of the previous escrow items with the exception of the items marked with an asterisk(*). The payment of the items marked with an asterisk (*) are the responsibility of the homeowner.

Home Loan Activity Since Your Last Statement

Date	Description	Principal	Number of Days Interest Paid	Interest	Escrow	Total
08/31/2010	September payment	\$193.21	0	\$539.71	\$0.00	\$732.92
	Ending Balance	\$110,045.83			\$0.00	

Credit Reporting Notice:

We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report.

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Conventional - 6067
5620 SCENIC POINTE AVENUE

Transaction History

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Your transaction history includes activity that has taken place within the last 18 months. This may reflect recent activity that is not yet updated on your statement page. Select [View Oldest Activity First](#) to re-sort your transaction history.

Transaction History 04/24/2009 to 08/31/2010

Date / Description	Payment Amt / Life/Disability Ins.	Principal / Balance	Interest / Buydown	Escrow / Balance	Late Charge / Balance	Partial / Balance
08/31/2010	\$732.92	\$193.21	\$539.71	\$0.00	\$0.00	\$0.00
09/10 Payment	\$0.00	\$110,045.83	\$0.00	\$0.00	\$0.00	\$0.00
07/29/2010	\$732.92	\$192.27	\$540.65	\$0.00	\$0.00	\$0.00
08/10 Payment	\$0.00	\$110,239.04	\$0.00	\$0.00	\$0.00	\$0.00
06/30/2010	\$732.92	\$191.33	\$541.59	\$0.00	\$0.00	\$0.00
07/10 Payment	\$0.00	\$110,431.31	\$0.00	\$0.00	\$0.00	\$0.00
05/28/2010	\$732.92	\$190.40	\$542.52	\$0.00	\$0.00	\$0.00
06/10 Payment	\$0.00	\$110,622.64	\$0.00	\$0.00	\$0.00	\$0.00
04/30/2010	\$732.92	\$189.47	\$543.45	\$0.00	\$0.00	\$0.00
05/10 Payment	\$0.00	\$110,813.04	\$0.00	\$0.00	\$0.00	\$0.00
03/31/2010	\$732.92	\$188.55	\$544.37	\$0.00	\$0.00	\$0.00
04/10 Payment	\$0.00	\$111,002.51	\$0.00	\$0.00	\$0.00	\$0.00
02/26/2010	\$732.92	\$187.63	\$545.29	\$0.00	\$0.00	\$0.00
03/10 Payment	\$0.00	\$111,191.06	\$0.00	\$0.00	\$0.00	\$0.00
01/29/2010	\$732.92	\$186.71	\$546.21	\$0.00	\$0.00	\$0.00
02/10 Payment	\$0.00	\$111,378.69	\$0.00	\$0.00	\$0.00	\$0.00
12/30/2009	\$732.92	\$185.80	\$547.12	\$0.00	\$0.00	\$0.00
01/10 Payment	\$0.00	\$111,565.40	\$0.00	\$0.00	\$0.00	\$0.00
11/27/2009	\$732.92	\$184.90	\$548.02	\$0.00	\$0.00	\$0.00
12/09 Payment	\$0.00	\$111,751.20	\$0.00	\$0.00	\$0.00	\$0.00
10/29/2009	\$732.92	\$184.00	\$548.92	\$0.00	\$0.00	\$0.00
11/09 Payment	\$0.00	\$111,936.10	\$0.00	\$0.00	\$0.00	\$0.00
09/28/2009	\$732.92	\$183.10	\$549.82	\$0.00	\$0.00	\$0.00
10/09 Payment	\$0.00	\$112,120.10	\$0.00	\$0.00	\$0.00	\$0.00
08/28/2009	\$732.92	\$182.21	\$550.71	\$0.00	\$0.00	\$0.00
09/09 Payment	\$0.00	\$112,303.20	\$0.00	\$0.00	\$0.00	\$0.00
07/30/2009	\$732.92	\$181.32	\$551.60	\$0.00	\$0.00	\$0.00
08/09 Payment	\$0.00	\$112,485.41	\$0.00	\$0.00	\$0.00	\$0.00
06/26/2009	\$732.92	\$180.44	\$552.48	\$0.00	\$0.00	\$0.00
07/09 Payment	\$0.00	\$112,666.73	\$0.00	\$0.00	\$0.00	\$0.00
06/02/2009	\$732.92	\$179.56	\$553.36	\$0.00	\$0.00	\$0.00
06/09 Payment	\$0.00	\$112,847.17	\$0.00	\$0.00	\$0.00	\$0.00
04/24/2009	\$732.92	\$178.69	\$554.23	\$0.00	\$0.00	\$0.00
05/09 Payment	\$0.00	\$113,026.73	\$0.00	\$0.00	\$0.00	\$0.00

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CERTIFICATE OF MAILING

I, Thomas F. West, hereby certifies that a copy of the Opposition to Motion to Dismiss Amended Complaint filed on the 20 day of December, 2010, in the above-entitled case was mailed by me on December 20, 2010 by depositing copies thereof in a sealed envelope, first-class postage prepaid, in the United States mail, to

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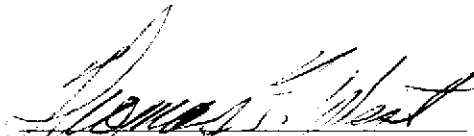
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Reston, VA 20190

Dated: December 20 2010


Thomas F. West
Plaintiff
In Proper Person